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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,832	11/13/2001	Cyrus O. Varan	913503106803	6139

7590 01/13/2004

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EXAMINER

LUBY, MATTHEW D

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 01/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/986,832

Applicant(s)

VARAN, CYRUS O.

Examiner

Matt Luby

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 3, 4 and 6-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5 and 10-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Toronto et al. (5,918,894).

3. Toronto et al. disclose a vehicle including a bicycle frame (see 12 and 14 in Figures 1B, 2B, 3B for use with the propulsion assembly shown in Figure 10) and for pedal propulsion (by 202 and 203, shown in Figure 10), the vehicle including a pedal crank assembly (202 and 203) journaled from the frame about a transverse axis (the axis of 205 shown in Figure 10), a seat mounted from the frame appreciably above and rearward of the axis of rotation of the pedal crank assembly such that a person seated on the seat in a substantially upright position may operatively engage and drive the pedal crank (the seat would inherently be at the top of 12 in Figures 1B, 2B and 3B, but is not shown, and would be above and rearward of the axis of rotation of 205 and the person seated would inherently engage the pedal crank assembly with his or her feet - expressly disclosed in column 4, lines 15-22; also reference numeral 12 is called a seat tube - therefore a seat is at the top thereof and would therefor meet the requirement of

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the claim that "a seat" be "mounted from [the] frame appreciably above and rearward of the axis of rotation of the pedal crank" since the upper-most part of 12 which is shown in Figure 1B is "above and rearward of the axis of rotation of the pedal crank"), the vehicle including a drive wheel (255) journaled therefrom (shown in Figure 10) including at least one driven wheel gear (218) equipped with a one-way clutch (222, see discussion of the freewheeling clutch 222 in lines 8-22 of column 10), a pedal crank drive wheel gear (205), a drive train structure (200) including a closed loop drive chain (211) drivingly connecting the pedal crank assembly (202 and 203) to and meshed with/mounted on the driven wheel gear (218) for rotation of the drive wheel in a direction opposite to rotation of the pedal crank assembly (if the pedal crank assembly is rotated in the reverse direction, i.e., counterclockwise, as explained in line 61, column 9 to line 30, column 11, then the sprocket 218 is rotated clockwise and the reverse pedal drive sprocket is rotated clockwise, which rotates chain 251, thereby rotating rear wheel 255 forward through the sprocket 254 on rear axle 256) and at least one auxiliary wheel (224) journaled from the frame (this is inherently shown in Figure 10), wherein the drive chain is engaged with the auxiliary wheel (see Figure 10).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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- invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Toronto et al.

6. Toronto et al. disclose all of Applicant's claimed limitations except that the driven wheel gear is coaxial with the driven wheel. It would have been obvious matter of design choice to modify the Toronto et al. reference by having the driven wheel gear coaxial with the driven wheel rather than connected through a drive train (as shown in Figure 10), since applicant has not disclosed that this coaxial relationship solves any stated problem or is for any particular purpose and it appears the driven wheel, driven wheel gear and in fact, all of the claimed limitations, would perform equally well with the driven wheel gear connected to the driven wheel in a non-coaxial relationship.

7. Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toronto et al. in view of Lawson (U.S. Patent 6,079,775).

8. Toronto et al. disclose all of Applicant's claimed limitations (as recited in the rejection of claims 1, 2 and 5 above) but does not specifically disclose that the seat is mounted more than 22° and less than 45° (or about 30°) rearward of a vertical line through the transverse axis of the pedal crank assembly. Lawson discloses that the seat is mounted more than 22° and less than 45° (or about 30°) rearward of a vertical line through the transverse axis of the pedal crank assembly (col. 2, lines 58-63 disclose that the seat tube angle is 68° to 75° which would equal 22° to 15° since 90° minus 68° or 75° is 22° or 15°) in order to select a frame with an appropriate seat tube angle (col. 2, lines 52-63). It would have been obvious to one of ordinary skill in the art at the time

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of the invention to provide that the seat tube angle on the Toronto et al. bicycle is more than 22° and less than 45° (or about 30°) rearward of a vertical line through the transverse axis of the pedal crank assembly, as taught by Lawson, in order to select a frame with an appropriate seat tube angle.

Response to Arguments

9. Applicant's arguments filed 10/06/03 have been fully considered but they are not persuasive.

10. Regarding the rejection of claims 1, 2 and 5 Applicant argues on page 10, 2nd full paragraph that Toronto et al. "doesn't teach that the seat is mounted appreciably rearward of the crank assembly axis or that it is inclined about 30° from the vertical." In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the "seat...is inclined about 30° from the vertical") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, the Toronto et al. patent most definitely does teach that the seat "is mounted appreciably rearward of the crank assembly". The following language also appears in the above rejection but is being repeated here for the benefit of the Applicant so that they may understand that there is no doubt as to whether Toronto et al. teach that the seat "is mounted appreciably rearward of the crank

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assembly." The seat would inherently be at the top of 12 in Figures 1B, 2B and 3B, but is not shown, and would be above and rearward of the axis of rotation of 205 and the person seated would inherently engage the pedal crank assembly with his or her feet. This is expressly disclosed in column 4, lines 15-22; also reference numeral 12 is called a seat tube - therefore a seat is at the top thereof and would therefor meet the requirement of the claim that "a seat" be "mounted from [the] frame appreciably above and rearward of the axis of rotation of the pedal crank" since the upper-most part of 12 which is shown in Figure 1B is "above and rearward of the axis of rotation of the pedal crank".

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Gasirowski patent discloses that a seat tube angle may be varied to any desirable angle.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matt Luby whose telephone number is (703) 305-0441. The examiner can normally be reached on Monday-Friday, 9:30 a.m. to 6:00 p.m..

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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14. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Matt Luby
Examiner
Art Unit 3611

M.L.

M.I.
January 9, 2004

Lesley D. Morris
LESLEY D. MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600